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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/009,629

12/12/2001

Wilhelm Rademacher

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11/06/2008

NOVAK DRUCE DELUCA + QUIGG LLP

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/009,629	<b>Applicant(s)</b> RADEMACHER ET AL.	
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,9-12 and 14-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7,10-12 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 3,9 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments filed 8/26/08 have been fully considered but they are not persuasive. See argument below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,7,10-12,15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motojiuma et al (USPN 4866201; 9/12/89). Motojiuma et al suggests a method of regulating the growth of orchards comprising applying to the orchards (fruit trees) a composition comprising instant compounds of formula I. See abstract, column 20 lines 50-63. Motojiuma et al does not teach an invention comprising citrus fruit trees or an invention comprising increasing amounts of flavonoids and other phenolic compounds. Note that orchards are fruit trees. Also note the step of applying the compound of formula I to the fruit tree in the claim is also carried out by Motojiuma which makes it obvious that the flavonoids and other phenolic compounds would increase in the orchards of Motojiuma. Motojiuma et al. does not specify the fruit trees listed in the claims. However, absent a showing of unexpected results for specific fruit trees, it would have been obvious to expect that the application of the compounds to any fruit tree, including those instantly claimed, would have resulted in the regulation of the tree's growth. Motojiuma et al. teaches the application of the compound to the undergrowth grasses rather than directly to the actual orchard plants. Applicant provided abstracts of Derr and Ahrens to

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demonstrate that the application of a chemical to undergrowth grasses does not include the chemical's application to the actual plant (orchard). The Examiner agrees that Motojiuma et al does exemplify the application of the chemical to the undergrowth grasses in orchards at column 20 lines 50-63. However, at column 20 lines 30-37, Motojiuma et al. teaches the application of the chemical to foilage which would include orchard foilage. The teaching , at column 20 lines 30-37 would have made it obvious to apply the chemical to the foliage of any plant including the orchard plants claimed in order to regulate their growth.

*Response to Applicants' argument*

Applicants argue:

- 1) Motojiuma et al does not teach a method of increasing the flavonoid content of a plant.
- 2) Motojiuma et al teaches that the compound to their formula may be used to treat various/numerous locations including undergrowth grasses (non-crop land) in orchards. In order to arrive at the Applicants' invention one would have to select treating the location of undergrowth grasses in orchards from the numerous locations disclosed in Motojiuma et al. Motojiuma et al is not to specific orchards such as cherries, plums and sloes to be treated using a specific compound of formula I as recited in instant claims.
- 3) Motojiuma et al. teaches the application of the compound to the undergrowth grasses rather than directly to the actual orchard plants. Applicant provided abstracts of Derr and Ahrens to demonstrate that the application of a chemical to undergrowth grasses does not include the chemical's application to the actual plant (orchard).

The Examiner argues:

The step of applying the compound of formula I to the fruit tree in the claim is also carried out by Motojiuma et al which makes it obvious that the flavonoids and other phenolic compounds would increase in the orchards of Motojiuma et al. The claims are specific to treating specific types of fruit trees (orchards), whereas Motojiuma et al is to treating orchards broadly. Note, no data have been provided by the Applicants' demonstrating that the treatment of different orchards with a compound of formula I would render unobvious results. Motojiuma et al teach orchards broadly which encompass the specific orchards of the claims. With respect to specific compounds of the formula disclosed by Motojiuma et al, Motojiuma et al teaches the use of many compounds (see Table 1) that are equivalent to the compounds of formula I which are embraced by the instant claims. The Examiner agrees that Motojiuma et al does exemplify the application of the chemical to the undergrowth grasses in orchards at column 20 lines 50-63. However, at column 20 lines 30-37, Motojiuma et al. teaches the application of the chemical to foilage which would include orchard foilage. The teaching , at column 20 lines 30-37 would have made it obvious to apply the chemical to the foliage of any plant including the orchard plants claimed in order to regulate their growth.

***Claim Objection / Allowable Subject Matter***

Claims 3,9,14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 6 is allowable. The prior art does not teach or suggest the invention comprising grape plants.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616